

Appendix D

1. ELEMENTS OF APPELLATE CASE FILES

These charts are intended to list the basic items in case files used in the courts of appeals and bankruptcy appellate panels, respectively, and to identify characteristics bearing on the potential inclusion of each item in an “electronic” case file. Several listed items are not part of the official case file (e.g., internal memoranda), but are included in this chart to note the potential demand for the electronic dissemination of such items among chambers and/or court units. In addition, the National Archives and Records Administration’s archiving requirements, which are set forth in volume XIII, chapter XVII of the *Guide to Judiciary Policies and Procedures*, govern the retention of appellate records. Records management policies for micrographic and electronic records have not yet been established.

The column headings may be explained as follows:

- a. **File Item** -- Because document titles may vary from court to court, this column for the most part presents general categories of documents, such as “procedural motions” or “briefs.” The purpose is to identify the basic documents that may be part of a case file, whether defined as the public file or something more extensive. The “file item” category has been further sub-divided into groups based on the progress of a case and/or the origin of the documents.
- b. **Type of Proceeding** -- denotes the type of case in which a particular file item may be expected to appear. Thus, “petition for review” would appear only in agency cases, while “submissions of initial information” should appear in all cases.
- c. **Creator** -- indicates who is responsible for creating, and/or filing, a document. For example, orders are created by the court, while motions are created by the parties.
- d. **Available in Electronic Format?** -- this column represents an educated guess concerning the likely availability of the document in electronic format. Where appropriate, alternative possibilities are noted (i.e., the notice of appeal may be available in electronic form from some, but not all, parties).
- e. **Volume or Size** -- indicates how many times a particular item is likely to appear in a case file, and the probable average size of the document.
- f. **Item User** -- attempts to specify who may need access to particular file items. As to all documents in the public file, it is presumed that both the litigants and the public may seek access at any time. Likewise, the court may need access to any item at any time. Thus, the entries in this column describe the necessary recipients of each item while the case is proceeding. For example, the counsel’s appearance form is created by a party for the

court and is filed with the clerk. Accordingly, the clerk is the only listed item user even though parties, the court, or the public may seek access to the form at some time.

- g. Access Limits?** -- indicates whether there may be limits on access to a particular file item.
- h. Special Considerations** -- describes special issues about a particular file item that affect whether (or how) the item may be made part of an electronic case file.

a. Elements of the Court of Appeals Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
Pre-Case Opening Documents							
district court docket	appeal from district court	district court clerk	yes	one per case; varies	all	no	court of appeals has access to district court docket, but it is not generally linked to the case file
Case Opening Documents							
notice of appeal (FRAP 4)	appeal from district court	party	Probably (depends on party)	one per case (except for multiple appellants); usually one page	clerk, parties	no	notice filed in district court; court may require filing copy of decision below with notice of appeal
petition for review; applications for enforcement (FRAP 15)	agency case	party	Probably	one per case; usually one page	clerk, parties	no	Court may require filing copy of agency decision with petition for review
applications for interlocutory appeal (FRAP 5.1)	district court	party	probably	varies	all	if sealed	
applications for extraordinary writs (FRAP 21)	original proceedings	parties	Generally yes, probably no if pro se	one per case, varies in size	clerk, staff attorneys, and chambers	no	Need to serve judge or official against whom mandamus is sought
Initial Pleadings and Orders							
counsel's appearance form (FRAP 12)	all but pro se cases	parties	probably	one to several per case	clerk	no	Form may be generated by clerk and sent to parties for completion
forms or other documents related to settlement programs	depends on circuit	clerk and parties	probably	one to several per case	clerk, chambers	yes	Requirements vary by circuit and possibly by type of case. May involve clerk's form that is sent to party for completion

a. Elements of the Court of Appeals Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
Preliminary matters in pro se and/or prisoner cases: (i.e. motions for leave to proceed in forma pauperis, requests for certificates of probable cause or appealability) (FRAP 24)	any case	parties	probably not	one per case; size varies	(depends on substance of motion): clerk, staff attorneys, and chambers	no	in many cases, these items are presented first to the district court
Preliminary matters in all counseled cases (i.e., case docketing statements or notices; request for initial information such as copy of decision below, statement of interest, related cases) (FRAP 12)	any case	court	yes	one per case	clerk, parties, and staff attorneys, or chambers (depending on case screening procedures)	no	
orders disposing of preliminary matters	any case	court	yes	several in each case; generally one page orders	parties	no	
submissions of initial information requested by the court; counsel appearances (FRAP 12)	any case	parties	probably; some non-electronic attachments likely	one per case	same as notice and request for initial information	no	
filing of record below in district court cases (FRAP 12)	cases originating in district court	parties	probably not (unless district court case file is electronic)	one record per case; length varies greatly	all	no, unless sealed material	The district court docket is a ready “index” to the record. Transcripts (especially in criminal matters) evidentiary materials, and exhibits will pose special issues

a. Elements of the Court of Appeals Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
filing of record below in agency cases (or certified index of agency record) (FRAP 12)	agency cases	parties; court or agency below	index of record likely in electronic format; availability of record items will vary greatly	one record per case; size of what is filed varies greatly.	parties, chambers	no, unless sealed material	There is likely a wide range of variation among the litigating agencies with respect to electronic availability and format of agency case files. Further study is required on this issue.
Motions							
non-dispositive (scheduling, etc.) motions; responses to motions (FRAP 27)	any case	parties	yes, depending on litigants	depends on case; generally under 5 motions per case; length under 10 pages each	parties, clerk, and staff attorneys (assuming they initially review such motions); chambers with respect to certain non-dispositive motions	no	
case dispositive motions; motions for stay or expedition; and responses to such motions (FRAP 8, 27)	any case	parties	yes, depending on litigants	generally one set of motions per case; length usually would not exceed 20 pages (exclusive of attachments)	parties, chambers, and staff attorneys (depending on local procedures)	no	Motions for stay or expedition may require a quicker turn-around by the court (see also entry below on emergency motions).
emergency motions (i.e., motions that require an expedited decision) (FRAP 27)	any case	parties	depends on the litigants	generally one (if any) per case; length will vary greatly	parties, chambers, and staff attorneys (depending on local procedures)	no	Short deadlines (both for response to emergency motions and for reaching a decision on them) may require special procedures. Nee to evaluate whether electronic filing would help or hinder the resolution of emergency motions.

a. Elements of the Court of Appeals Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
orders granting/denying motions	any case	court	yes	several per case; usually a few pages each	parties, clerk, staff attorneys	no	
Briefs and Related Orders							
briefing schedule and other procedural orders and notices (FRAP 31)	any case	court	yes	usually one briefing schedule; maybe several procedural orders	parties, clerk, staff attorneys	no	
briefs (including joint appendix/record excerpts, supplemental citations, etc.) (FRAP 28-32)	any case	parties	generally yes for briefs; often no for appendix or record material	Brief size generally under 50 pages; may vary in specific cases	parties, clerk, chambers, and staff attorneys (depending on local procedure for non-argument appeals)	not in general; may be sealed	appendices & addenda may include materials not readily available in electronic form
Other Filed Documents							
miscellaneous proceedings (e.g., attorney discipline, motions for authorization to file successive habeas corpus petitions and for leave to file interlocutory appeals)		parties and court	depends on litigant	varies	clerk, chambers, staff attorneys	yes, in some cases	
supplemental proceedings (e.g., attorney's fee petitions, bill of costs contempt proceedings)	any case	parties and court	probably	one (if any) per case; length varies	clerk, chambers, staff attorneys, special masters (fee cases)	no	relationship with earlier proceedings on which fee request or contempt allegation is based; role of district court or agency in resolving fee issues

a. Elements of the Court of Appeals Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
Opinions/Orders and Other Documents Related to Case Closing							
oral argument record (FRAP 34)	any case	court	??	one per case	chambers	??	This may not apply to all circuits. Record is usually in audiotape format
decision/opinions (FRAP 36, 41)	any case	court	yes	One to three per case (depends on panel)	all	usually no limit	
panel/en banc rehearing petitions (FRAP 35, 40)	any case	parties	probably yes	one or more per case (if any); size varies	clerk, chambers, and staff attorneys (depending on local procedure)	no	
rehearing granted/denied (FRAP 35, 40)	any case	court	yes	one (if any) per case; size varies	same as for rehearing petitions	no	
Criminal Justice Act vouchers	criminal cases	attorney	probably (often a form)	one per case	clerk, chambers	no	
mandate and judgment (FRAP 36, 41)	any case	court	yes	one per case; generally on page	clerk, parties; lower court or agency that issued initial decision	no	
Court Private Documents (Note: these documents may take many forms and vary greatly among circuits.)							
internal memoranda	any case	chambers, clerk, and staff attorneys	usually	varies	chambers, staff attorneys, clerk (depending on item)	yes	

b. Elements of the Bankruptcy Appellate Panel Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
Case Opening Documents							
Bankruptcy Court (BKY) Docket Sheet and Adversary Docket Sheet (if applicable)	Appeal from the BKY Court	BKY Court	Yes	One or two per appeal; varies	All	No	BAP may have remote electronic access to BKY Court docket.
Notice of Appeal	Appeal from the BKY Court	Party	Probably	One per appeal; one or two pages	BAP; BKY Court; parties	No	The Notice of Appeal is filed in the BKY Court.
Order being appealed	Appeal from the BKY Court	BKY Court	Yes	One per appeal; varies	All	No	The order or judgment being appeals is included as part of the preliminary record sent to the BAP from the BKY Court; also required to be attached to the Notice of Appeal.
Other documents required to be filed with the Notice of Appeal	Appeal from the BKY Court	Party	Probably	Varies; varies	All	No	Each BAP may have documents required to be filed with the Notice of Appeal unique to that Circuit.
Motion for Leave to Appeal	Appeal from the BKY Court	Party	Probably	One per appeal; varies	All	No	A motion for leave to appeal is required to be filed with a Notice of Appeal.
Application for Extraordinary Writ	Original Proceeding	Party	Probably	Varies; varies	All		Required to be served on the judge or official against whom mandamus relief is sought.
Appeal opening letter	Any appeal	BAP	Yes	One per appeal; two to three pages	Parties; BKY Court	No	
Deficiency notice	Any appeal	BAP	Yes	One to several per appeal; varies	Parties; BKY Court	No	Deficiency notices may be issued during case opening, pre-briefing, or briefing.

b. Elements of the Bankruptcy Appellate Panel Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
Order of dismissal for lack of prosecution or for jurisdictional reasons	Any appeal	BAP	Yes	One per appeal; two to three pages	All		A dismissal order for lack of prosecution may be issued during case opening, pre-briefing, or briefing.
Pre-Briefing Documents							
Election to the District Court	Any appeal	Party	Probably	One per appeal; varies	BAP; BKY Court; parties; possibly chambers	No	Election is generally filed by the appellee; may occasionally be filed by the appellant.
Other Required Pre-Briefing Pleadings	Any Appeal	Party	Probably	Varies; varies	BAP; BKY Court; parties	No	Each BAP may have specific filing requirements such as an entry of appearance, certificate of interested parties, designation of record, statement of issues, or transcript order form. Many of these forms may be available in an electronic format for the parties' use. Many of these forms may be required to be filed with the BKY court and/or the BAP.
Supplemental Record	Any Appeal	BKY Court	Probably	Varies; varies	All	No	The BKY Court may be required to supplement the preliminary record with subsequently filed motion, orders, or other pleadings.
Notice Record Complete/Certificate of Readiness	Any Appeal	BKY Court	Yes	One page	BAP; BKY Court; parties	No	The BKY Court will notify the BAP that the record is complete for purposes of appeal.

b. Elements of the Bankruptcy Appellate Panel Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
Preliminary matters and motions	Any Appeal	Parties	Probably	One to several per appeal; varies	BAP; Bky Court; party; possibly chambers	No	
Orders disposing of preliminary matters	Any Appeal	BAP	Yes	One to several per appeal; varies	Parties	No	
Motions							
Non-dispositive Motions (scheduling, etc.); Responses to Motions	Any Appeal	Parties	Probably	One or more per appeal; varies	BAP; parties; possibly chambers	No	
Emergency Motions; Response	Any appeal	Parties	Probably	Generally one per case; varies	BAP; parties; chambers; possibly the BKY Court	No	Emergency motions may require specific attachments. Immediate turn-around is essential.
Motions for Stay Pending Appeal; Response	Any appeal	Parties	Probably	Generally one per case; varies	BAP; parties; chambers; possibly the BKY Court	No	A motion for stay must be filed with the BKY Court in the first instance. Stay motions may require specific attachments. Immediate turn-around is essential.
Dispositive Motions; Response	Any appeal	Parties	Probably	Generally one per case; varies	All	No	
Orders disposing of any Motion	Any appeal	BAP	Yes	Varies; varies	BAP; parties; chambers; possibly the BKY Court	No	
Briefing							
Briefing Schedule	Any appeal	BAP	Yes	One per appeal; one to two pages		No	

b. Elements of the Bankruptcy Appellate Panel Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
Brief - Opening; Appendix	Any appeal	Party	Probably	50 pages; appendix size may vary greatly	All	No	Appendix may include items not available in an electronic format.
Brief - Response; Appendix	Any appeal	Party	Probably	50 pages; appendix size may vary greatly	All	No	Appendix may include items not available in an electronic format.
Reply Brief; Appendix	Any appeal	Party	Probably	20 pages; appendix size may vary greatly	All	No	An additional reply brief may be filed if there is a cross appeal.
Opinions and Other Documents Related to Case Closing							
Oral Argument Scheduling Documents	Any appeal	BAP	Yes	Varies; varies	All	No	
Oral Argument Appearance Form	Any appeal	Parties	Probably	Varies; one to two pages	BAP; parties	No	Form may be available in an electronic format for the parties' use.
Oral Argument Record	Any appeal	BAP	Audio Tape	One per appeal	Chambers	Yes	Tapes are generally limited to Chambers use.
Opinion	Any appeal	BAP	Yes	One per appeal; varies	All	No	Distribution of a decision may include publishing companies, other court units, and other interested parties.
Motion for Rehearing	Any appeal	Party	Probably	One per appeal; varies	All	No	
Order disposing of Motion for Rehearing	Any appeal	BAP	Yes	One per appeal; varies	All	No	
Mandate and Judgment	Any appeal	BAP	Yes	One per appeal; varies	All	No	

b. Elements of the Bankruptcy Appellate Panel Case File

File Item (including statutory authority or rule)	Type of Proceeding	Creator	Available in electronic format?	Volume or size	Item User	Access limits?	Special Considerations
Appeal to the Circuit	Any appeal	BAP	Probably	One per appeal; varies	All	No	An appeal to the Circuit Court may include other related documents.
Internal Documents							
Internal Memoranda	Any appeal	BAP	Yes	Varies; varies	Internal use only	Yes	